

## Section 100.340 Petition For the Adoption of a Rule to the Illinois Liquor Control Commission

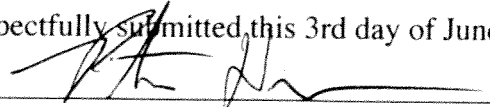
### Proposed Rule 100.342 "Private Function Exception"

I, Pat Doerr, on behalf of the Hospitality Business Association of Chicago (HBAC) a non-profit Association of retailers under the jurisdiction of the Illinois Liquor Control Commission, in my capacity as HBAC's managing director, do hereby petition the Illinois Liquor Control Commission to Adopt a Rule regarding the Private Function Exception to the Illinois Happy Hour Law for the following reasons:

- 1) The Hospitality Business Association of Chicago is a non-profit association of more than one hundred locally owned small businesses that are retail licensees of the Illinois Liquor Control Commission.
- 2) It is essential for small businesses in the Illinois hospitality industry to have clear and concise regulations interpreting the Illinois Liquor Control Act so as to ensure compliance with the law and responsible service of beer, wine, and spirits.
- 3) Since it's adoption by the State of Illinois, the Happy Hour Law as codified at 235 ILCS 5/6-28 "Happy Hours Prohibited" has included the statutory exception of 235 ILCS 5/6-28 (b): "No retail licensee or employee or agent of such licensee shall.... sell, offer to sell, or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public" (*emphasis added*).
- 4) In order to provide clear guidelines to small businesses in the Illinois hospitality industry, while promoting responsible service, regulatory clarification of what is a private event under the Happy Hour Law is critical for retailer licensees of the commission.
- 5) With the advent of social media such as Twitter, Facebook, Instagram, Pinterest, and other means of communication such as text messaging and email, (means of communication not even envisaged at the time of the Happy Hour Law's adoption) additional regulatory guidance is required for both licensees and the general public on the interaction of such means of communication regarding events at Licensees and the statutory private events exception.
- 6) Legislative history from the Happy Hour Law's debate and adoption (attached Exhibits I and II) indicates strong legislative intent to clearly exempt private events from Happy Hour Law's strictures.

For the foregoing reasons, and in order that the Illinois hospitality industry may have clear guidance on compliance with the private event exception to the Happy Hour Law, we respectfully urge the Commission adopt the attached proposed rule "100.342 Private Function Exception" and submit it to the Joint Committee on Administrative Rules for adoption pursuant to the Illinois Administrative Procedure Act and/or in the alternative hold a subject matter hearing at it's earliest convenience for further discussion and formulation of rules and regulations on this before taking further rule-making action.

Respectfully submitted, this 3rd day of June, 2014.

  
Pat Doerr, Managing Director  
Hospitality Business Association of Chicago  
3023 North Clark Street #276, Chicago, Illinois 60657 312-494-5880

### **Proposed Private Function Exception Rule**

100.342 Private Function Exception

Private Function Exception pursuant to the Illinois Liquor Control Act and 235 ILCS 5/6-28

Conditions of a Private Function:

- (A) Prearrangement - Retail license holder shall agree to terms in writing before the private event, not less than 24 hours prior, with a specific host of the event for which alcoholic liquor is pre-sold per the expected number of guests. Terms of the agreement can be amended during the event to accommodate extended hours or larger than expected guest attendance. Licensee shall retain all private function event contracts for a period of not less than one year following the event.
  - (B) Licensee advertising prohibited - Licensee shall not advertise the event to the general public through print, electronic, social, postal, or other forms of media outlets under its control. If Licensee does promulgate any such form of advertising the event is public and unlimited drinks are prohibited;
  - (C) Licensee Cover Charge Prohibited - The Licensee shall not charge or otherwise collect for its own use a cover charge or door entry fee.
  - (D) Dedicated event space - Private events hosted by Licensee under this exception shall be held in a room or otherwise clearly delineated space within the Licensee's premises reserved for the exclusive use of the host and host's invitees during the entirety of the event.
  - (E) Host or other third party advertising of events - Licensee shall take reasonable steps, including provisions within the private function's written contract, informing event host that the host's communications to invitees about the event whether by print, electronic, social media, or other means must (i) be limited to a reasonable finite number of persons, (ii) provided by event host to the licensee prior to publication or circulation so that licensee may review them, and (iii) informing host that licensee's obligations under the Liquor Control Act may require them to cancel, or alter the nature of the event, in instances of noncompliance with the private event advertising provisions of this rule.
  - (F) Licensee's compliance with each element of this Private Event Exception shall create a rebuttable presumption that the event is permitted under the Illinois Liquor Control Act.
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EXHIBIT 1

IN SUPPORT OF PETITION TO ADOPT  
PROPOSED RULE 100.342  
PRIVATE FUNCTION EXCEPTION

TRANSCRIPT OF PROCEEDINGS OF  
THE ILLINOIS SENATE  
CONSIDERING SENATE BILL 234  
("THE HAPPY HOUR BILL")  
86th GENERAL ASSEMBLY  
MAY 26, 1989

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receive the required constitutional majority, Senate Bill 213 is declared lost. Senate Bill 234. Senator Mahar. Read the bill, Mr. Secretary.

ACTING SECRETARY: (MR. HARRY)

Senate Bill 234.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

Thank you, Madam President. According to the Division of Traffic Safety at IDOT, forty-five percent of all motor vehicle accidents are alcohol-related. And thirty-five percent involve a fatality. Last year thirty-five percent of these accidents were during the hours of four to eight, and the most prevalent days of the week were Wednesday and Friday - an obvious correlation to what has become known as "Happy Hour" promotions. This legislation will require basically one thing - that liquor licensees in the State of Illinois establish a price for their product, with certain exceptions stated in this bill, and then sell at that price. This bill is patterned after those of which thirteen other states have adopted, and it also includes each of the recommendations offered by the 1984 DUI Task Force. The amendment that we placed on the bill in 2nd Reading removes the opposition of the beer industry or the breweries. This never had any opposition from the business lobby, IRMA, State Chamber, NFIB. As you might expect, it's strongly supported by the Illinois Restaurant Association, the Illinois Association -- or the Illinois Alcohol and Drug Dependence Association, the Alliance Against Intoxicated Motorists, MADD, Students Against Drunk Driving, TASK, InTouch, and the like.

PRESIDING OFFICER: (SENATOR COLLINS)

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Further discussion? Senator Lechowicz.

SENATOR LECHOWICZ:

Thank you, Madam President, Ladies and Gentlemen of the Senate. Would the sponsor yield to a question or two?

PRESIDING OFFICER: (SENATOR COLLINS)

He indicates he will yield.

SENATOR LECHOWICZ:

In your bill, what's the definition of a drink?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

I -- the drink would be defined as it already is under the Liquor Control Act of 1934.

PRESIDING OFFICER: (SENATOR COLLINS)

Further discussion? Senator Lechowicz.

SENATOR LECHOWICZ:

Which is what? What is the definition of a drink?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

I don't have that in front of me right now, Senator.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Lechowicz.

SENATOR LECHOWICZ:

Well, Madam President, the reason why I raise the question as far as the definition of a drink -- as amended, it would say no retail licensee may serve more than one drink in -- to one person at a time, which is fine, and -- but I'd like -- in my neighborhood, where we're working-class people, many people may like to order a shot and a beer. Now is that out of order under this bill?

PRESIDING OFFICER: (SENATOR COLLINS)

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Further discussion?

SENATOR LECHOWICZ:

Wait. I asked a question. I want an answer.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar. Senator Mahar.

SENATOR MAHAR:

That was not my intent, Senator.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Lechowicz.

SENATOR LECHOWICZ:

Maybe not your intent, that's why we requested a definition of a drink. But unfortunately, as the bill is presented before us, that would probably be out -- a person who asks for a shot and a beer and was served a shot and a beer in an establishment, he'd be in violation of this law. And I don't believe any one of us want to see anybody intoxicated, or on the verge of intoxication, at the wheel or depriving any safety to any other individual in this State. But when you're coming down here and saying that this amendment takes care of the supposedly beer concerns, the only thing the amendment did -- said they were able to serve a pitcher of beer. I think that the responsibility lies with the owner of the business establishment and its patrons. And I would imagine that if a person wants a shot and a beer, they should be entitled to have it. And if you have more than a -- than your entitled amount, another person should assume the responsibility of making sure you get home. And you should be cut off. That's not contained in your bill. You're just saying eliminate all happy hours, but in my neighborhood, we're not concerned about happy hours. We're more concerned about having the ability to sit down at -- in a friendly establishment and order a drink and enjoy it with some friends and neighbors. And that's -- I think this bill goes much too far. It eliminates a lot of hospitality between

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people, and I'm gonna vote No.

PRESIDING OFFICER: (SENATOR COLLINS)

Further discussion? Senator Jacobs.

SENATOR JACOBS:

Thank you, Madam Chairman. I guess -- I have a little problem. I told Senator Mahar that I would vote with him on this yesterday, and I still may, because I just need some verification on this myself. We have a feeling -- or I have a feeling that whenever we look at the language, that this could ban even Super Bowl parties and things like that. Is that your intention, Senator?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

No, Senator. It will not ban Super Bowl parties. One of the exceptions in the bill would be for those type of functions such as weddings, banquets, and the like. Those type of things are exempt, where everything is in a package deal.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Jacobs.

SENATOR JACOBS:

Okay. But, could you -- could you, when you had it, say, "We're gonna have a Super Bowl Party," and where you normally charge a dollar for a pitcher, say "We're gonna, because of the -- the vastness of the party, we're gonna have fifty-cent pitchers"? And I know those prices are out of line.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

Pitchers are exempt under this bill.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Jacobs.

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SENATOR JACOBS:

Just one further question, then. Whenever you say, "may serve more than one drink to one person," are we talking about - if I have a half a beer in front of me, can you serve me another one? And if so, how do we regulate that? I -- I like what you're trying to do, and you know I do, 'cause I told you that, and I just think that there's -- if we could take it out of the record and come back to it somewhere along the line, I think we could work it out. I don't know. And I just don't what to go back on my word to you, and that's my reason for --

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

Is that a question?

PRESIDING OFFICER: (SENATOR COLLINS)

Further discussion? Senator Kustra.

SENATOR KUSTRA:

Thank you, Madam President and Members of the Senate. I don't know whether or not every single "T" has been crossed, and every "I" dotted. I do know what the Gentleman is trying to accomplish. And I think that in most parts of this State you do have - especially perhaps in your more populated centers - large bars, which, especially on weekends, Friday nights, offer drinks two-for-one. He's already stated that's what he is trying to get at. It encourages a lot of overindulgence. It's real simple. You can go to your local law enforcement authorities; they can demonstrate to you where they can pick up the most people who have overindulged, and where the most accidents occur. It's in these areas where you have these large groups of people encouraged to overindulge by virtue of two-for-one, happy hour, whatever you want to call it. That's what we're trying to eliminate is that word "Happy Hour," get away from that concept. I think with this



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bill you do that. If there is some cleanup that needs to be done in the House, let's do it. But let's get the concept out of here and on its way, so we can remind people that they simply can't be overindulging without paying heavy, heavy prices for it.

PRESIDING OFFICER: (SENATOR COLLINS)

Further discussion? Senator Dunn.

SENATOR T. DUNN:

Thank you, Madam Chairman. Would the speaker -- would the sponsor yield, please?

PRESIDING OFFICER: (SENATOR COLLINS)

He indicates he will yield.

SENATOR T. DUNN:

Do I understand correctly that if I am at a bar, and the waitress is busy, and I walk up to the actual bar, and ask the bartender for a round of drinks, namely three drinks, that he is prohibited from giving me those to take back to the table for the three people sitting there?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

No. No. No. The purpose of this bill is to eliminate free alcohol to be dispensed during these things we call happy hour promotions, two-for-ones, and the like. If you're purchasing three beers for three individuals, you certainly can do that. He can't -- you can't purchase one beer and get two for the price of one. Or doubles.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Dunn.

SENATOR T. DUNN:

I understand your purpose, and I -- and I tend to agree with your purpose, but I guess my question is, you know, if it's a great big establishment, does the bartender have to look over at

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the table and count the three people in order to give me the three drinks? And, I mean, is that literally what the bill says? No. No?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar.

SENATOR MAHAR:

No. If he -- you know, you can purchase -- you can purchase three beers. If you wish to purchase three beers, you can. What we're trying to get at is the promotions of distributing beers -- yeah -- he can't give you six beers for the price of three.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Dunn.

SENATOR T. DUNN:

Well, can't a person get just as intoxicated on one pitcher of beer as -- if he drinks it himself, as opposed to, you know, getting two-for-one rum and cokes?

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Mahar. He indicates he doesn't know. Further discussion? Further discussion? Senator Mahar, to close.

SENATOR MAHAR:

Well, thank you, Mr. President and Members. Let me just briefly state this. What we have done in the State of Illinois since 1984 is -- what we certainly haven't done is provide a tolerance where you can't drink. In fact, you can actually drink and then get into your car and drive home. What we have suggested by all the legislation in the past four or five years, including what's this year, including this bill, is we've -- we've asked to exercise moderation. The idea of happy hours flies in the face of moderation. It's just as simple as that. When you have situations where you have it Wednesday night, or men's or ladies' nights, and they can come in and drink for free for five hours, well, that's certainly not exercising moderation. And the

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vast majority of those people will be getting in their cars, their vehicles, and driving home. And the same applies for two-for-one. Somebody goes into Senator Lechowicz's district and buys a beer or a martini, and they put two down in front of them, they'll drink it. And if anybody wants to buy another martini, they put two more down in front of them. This is not exercising moderation. They have all over this State these things called "endless cups," where you go in, you buy the cup, and you can drink beer for the rest of the night for free. That is exactly what we're trying to get at, and I think that this bill does a good job in that regard, and I would ask for an Aye vote.

PRESIDING OFFICER: (SENATOR COLLINS)

The question is, shall Senate Bill 234 pass. Those in favor will vote Aye. Opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, there are 37 Ayes, 14 Nays. 4 voting Present. Having received the required constitutional majority, Senate Bill 234 is declared passed. Senate Bill 238. Senator Barkhausen. Read the bill, Mr. Secretary.

ACTING SECRETARY: (MR. HARRY)

Senate Bill 238.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Mr. President and Members, Senate Bill 238 is sponsored by Senator Luft and I. It permits bank holding companies to organize under the Business Corporation Act to use the word "bank" in their holding company title, with the permission of the Commissioner of Banks and Trusts. It also deals with the question of civil

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immunity for directors of not-for-profit corporations, and extends the immunity that we've previously provided to not-for-profits that are organized other than under the Illinois Not-For-Profit Corporation Act. I ask for your support.

PRESIDING OFFICER: (SENATOR COLLINS)

Any discussion? The question is, shall Senate Bill 238 pass. Those in favor will vote Aye. Opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, there are 54 Ayes, 2 Nays, none voting Present. Having received the required constitutional majority, Senate Bill 238 is declared passed. Senate Bill 239. Senator Barkhausen. Read the bill, Mr. Secretary.

ACTING SECRETARY: (MR. HARRY)

Senate Bill 239.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR COLLINS)

Senator Barkhausen.

SENATOR BARKHAUSEN:

Madam President and Members. Senate Bill 239 is a bill that we've passed out of here unanimously before, dealing with refinements to the Uniform Federal Lien Registration Act, and also containing a provision that is a compromise between the Department of Revenue and the title insurance industry, relating to escrow accounts to satisfy tax bills owed the State. I again seek your support.

PRESIDING OFFICER: (SENATOR COLLINS)

Any discussion? If not, the question is, shall Senate Bill 239 pass. Those in favor will vote Aye. Opposed, vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary.

EXHIBIT 2

IN SUPPORT OF PETITION TO ADOPT  
PROPOSED RULE 100.342  
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TRANSCRIPT OF PROCEEDINGS OF  
THE ILLINOIS HOUSE  
CONSIDERING SENATE BILL 234  
("THE HAPPY HOUR BILL")  
86th GENERAL ASSEMBLY  
JUNE 22, 1989

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Clerk O'Brien: "Senate Bill 234, a Bill for an Act to amend the Liquor Control Act. Third Reading of the Bill."

Speaker Laurino: "Representative Barnes."

Barnes: "Thank you Mr. Speaker, Ladies and Gentlemen of the House. Senate Bill 234 is known as the Happy Hour Bill. Senator Mahar and myself introduced this Bill at the request of one of our Mayors of Orland Park, who considered the happy hour two for one drinks hazardous. What it does, it balances competition among the different establishments in the different areas, because they don't travel from one village to another village for the happy hours. We feel that this is a Bill that is going to save lives because statistics prove that there are more deaths between the hours of four and eight, which are happy hour hours. We have had, I would say, maybe eight or nine meetings with all of the different groups that I forementioned, to satisfy their objections. The intent of the Bill is not to harm any business of any type, it's just to go along with the...what people do now, drinking more in moderation, and people are far more concerned with people driving and drinking and killing pedestrians and other people on the streets. We have the support of the Tribune, the Sun-Times, the Illinois Restaurant Association, the Hotel-Motel Association, the Associated Beer Distributors, Jimmy Rittenburg, who owns Ditka's City Lights and other establishments, the Illinois Alcoholism and Drug Dependency Association, and on and on. The MADD...Mothers Against Drunk Driving, and Alliance Against Intoxicated Motorists. I would ask for an 'aye' vote."

Speaker Laurino: "Further discussion? Representative Weaver?"

Weaver: "Thank you very much, Mr. Speaker. Will the Sponsor yield? Representative, under the Bill now as amended, would it still allow for reduced prices for drinks?"

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Barnes: "No, It would not."

Weaver: "It would not? It was my understanding that it would, as long as that reduced price was on a daily basis, rather than on an hourly basis."

Barnes: "Well that's...what we want you to do is to be able to pay for each drink separately. It would be like, ladies nights where you wouldn't charge any fees at all. I think what you and I discussed, if you would go in and just like...pay one fee and drink for the night, it would...it would not...approve of that."

Weaver: "But on an individual drink basis it still would allow for...say if you wanted to run a special for a drink for one day you could still do that?"

Barnes: "Yes."

Weaver: "Okay. Would it prohibit the packaging of say...like, if a hotel wanted to offer a weekend package which included room, meals and drinks. Would the drinks be not allowed to be part of that package, under this law?"

Barnes: "It would not interfere with any type of packaging that hotels or motels offered. That was one of the agreements that we reached with the hotel-motel industry."

Weaver: "I understand. And it would not prohibit such as pitchers of beer or buckets of beer?"

Barnes: "It would not prohibit any specialties such as a bucket of beer or a pitcher of wine or a pitcher of margaritas, as long as they're served to more than one person at a table."

Weaver: "Okay. Mr. Speaker, to the Bill...I have to commend the Sponsor for working very closely with all the parties involved. As a matter of fact, I've been in close communication with a couple of the original objectors to this Bill. She's worked very diligently in working out all the problems in getting agreement and I think it's in a final form now that most everyone can accept and...speaking

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as a previous opponent to this Bill, I've been switched over and...she's taken care of all my concerns and I now urge an 'aye' vote on this Bill."

Speaker Laurino: "Further questions? Representative Ropp."

Ropp: "Thank you, Mr. Speaker. To the Bill...you know it is difficult and not always good policy for government to establish guidelines for the operation of a private business in which they exist within our communities. But on the other hand, we have this situation where the consumption of a particular liquid has a detrimental effect upon us both mentally and often times physically to the degree that we have, in fact, established a number of laws that regulate and put severe punishment on those people who drive automobiles, primarily because of the effect that those people who drive automobiles...through their reckless driving cause a number of fatalities, damage to their automobiles and other property. And so the state does, from time to time, get involved in attempting to save the lives. This is a Bill that I think begins to infringe a bit on private industry, although the impact of loss of life is more important than the regulations on a particular business. And so I highly stand in support of this measure, which attempts to somewhat, in a small way, discourage additional consumption of alcohol during times of after work and prior to, often times, going home. So I think this is a good Bill. It shows the intent of the state to encourage people to drink with some degree of moderation, because the lives of people are certainly more important than the pocket...than the pennies in the pockets of those promoters."

Speaker Laurino: "The Chair would like to remind the Members of the House that we have two days left to finish the entire Session on these Senate Bills, and I urge your



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consideration of the other Members who have Bills that want to be heard, so if we can keep our remarks to a minimum, it would certainly be helpful. Representative Mautino, one minute."

Mautino: "Thank you very much, Mr. Speaker. Will the Lady yield for a question or two?"

Barnes: "Yes."

Speaker Laurino: "She indicates she will."

Mautino: "Representative Barnes, as I look at Amendment #3...I think the question may have been asked, but I'm not certain whether or not. In a case of a benefit for a third party, entity or a person, like a civic or social agency, mental health facility, et cetera...That benefits are put on by a retailer at their place of business, this would not disallow that to occur, when in fact...have that young man move, I can't see who...thank you very much. That would not disallow a one price ticket for that particular event, would it?"

Barnes: "It would not, Representative Mautino. I think that was one of the questions that you had asked and we took your concerns and we took care of it in the Bill."

Mautino: "Okay. That is addressed in your Amendment? From the concerns of the wholesalers, we agree and we appreciate the attention you've addressed to the advertising issue which have made...was a major concern with us on this. The other question that was raised and I didn't hear responded to, or I must have missed it, was your comments on something like a ladies night. Would you please explain that one more time for me?"

Barnes: "I would be very happy to explain it. It would prohibit ladies nights where ladies would drink all night free."

Mautino: "Thank you very much for your comments."

Barnes: "You're welcome."